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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HEWITT II, CALVIN L

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.

09/644,411

Applicant(s)

ABLAN, GERALD H.

Examiner

Calvin L Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: _____

Status of Claims

1. Claims 1-26 have been examined.

Response to Amendments/Arguments

2. The Applicant has added the language of “receiving a plurality of auction requests in association with the account, each auction request associated with a different type of item to be posted for sale by auction”. However, this requires that the computer-controlled apparatus of claim 1 is barred from receiving auction more than one request (e.g. bids or buy submissions- Specification, page 11, lines 20-23; page 12, lines 1-14) for an item. Similarly, the system is prevented from having multiple auctions for the same item. For example, if seller A is selling a Playstation2, then no other seller can sell a Playstation2. This limitation, where each auction request associated with a different type of item to be posted for sale by auction, is not supported by the Specification. The Specification refers to items to be bought and sold at an auction (Specification, page 11, lines 20-23; page 12, lines 1-14) therefore, giving the claims there broadest reasonable interpretation a request can be for buying or selling. Regarding items “to be posted for sale”, this is taught by Rackson et al. as they disclose items selected from a catalog (figures 3 and 4, column 8, lines 5-12). However, independent of

whether the claims are directed at buying and/or selling, the Examiner has issue with the newly amended language of "[an item] to be posted for sale by auction" (e.g. claim 1). This is indefinite because items are never actually posted.

Therefore, in order to place a bid, a buyer would have to have a priori knowledge of the item. Regarding ads and ad templates, Rackson et al. teach items in a catalog for selection (figures 12, 13 and 14; column 14, lines 45-49; column 24, lines 6-12 and 26-56; column 26, lines, 21-28), therefore the claimed advertisement limitations are taught by the prior art.

The rejection is maintained.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the claimed invention is directed to non-statutory subject matter.

4. Claims 15, 16 and 23 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 1 recites "receiving a plurality of auction requests in association with the account, each auction request associated with a different type of item to be posted for sale by auction". However, this requires that the computer-controlled apparatus of claim 1 is barred from receiving auction more than one request (e.g. bids or buy submissions- Specification, page 11, lines 20-23; page 12, lines 1-14) for an item. Similarly, the system is prevented from having multiple auctions for the same item. Claim 1 also recites the amended language of "[an item] to be posted for sale by auction" (e.g. claim 1). This is indefinite because items are never actually posted. Therefore, in order to place a bid, a buyer would have to have a priori knowledge of the item.

Claims 2-16 are also rejected as they depend from claim 1.

b. Claims 15 and 16 provides for the use of a computer apparatus or computer-readable medium, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Claims 15 and 16 are also rejected as the computer-executable instructions and apparatus do not perform all the steps of claim 1 from which they depend. In particular, claim 1 recites a "requesting" step that is performed by a user.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4, 6, 9-12, 14-16, 17 and 20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Rackson et al., U.S. Patent No. 6,415,270.

As per claims 1-4, 6, 9-12, 14-16, 17 and 20, Rackson et al. teach a method for managing on-line auctions comprising:

- creating an (a plurality of) auction consolidation account(s) (figures 10, 12, 13 and 14; column 24, lines 5-57)
- receiving a plurality of auction requests in association with the account each to be posted on one or more auction site (figures 10, 12 and 13; column 24, lines 5-57)
- receiving auction submission for selling an item with an associated image of the item to be sold and posting the item on one or more auctions sites (figures 3 and 4, column 8, lines 5-12; column 9, lines 20-35)
- visiting each auction site and posting the corresponding request (figures 10, 12, 13 and 14)
- compiling a consolidated auction monitoring report containing information pertaining to each request and updating the report (figure 14; column/line 24/5-25/35; column 26, lines 21-28)
- revisiting each auction site to extract update information (column 23, lines 30-55; column/line 25/35-26/29)

- receive an auction advertisement text and image, receiving a plurality of predefined auction templates, creating an auction submission by combining the advertisement text and the advertisement image in a format defined by the selected auction template and transmitting the auction submission to the auction site (figures 12, 13 and 14; column 14, lines 45-49; column 24, lines 6-12 and 26-56; column 26, lines, 21-28)
- downloading, identifying and parsing a page (column/line 12/47-13/8; column 23, lines 30-55; column/line 25/35-26/29)
- determining whether the auction did not result in a sale (column 14, lines 8-16; column 17, lines 57-64)
- automatic feedback instructions associated with an account used to transmit data to said account, tracking fields for entering data regarding auctions, recording user input to the auction monitoring report (figures 12-14)
- obtaining auction processing, performing an operation in accordance with said instructions and setting a tracking field to indicate completion of the operation (figures 12-14)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 7-9, 13, 19, and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackson et al., U.S. Patent No. 6,415,270.

As per claims 5 and 7-9, Rackson et al. teach a system where a user can place a bid at multiple auction sites (abstract). Rackson et al. also teach requesting an auction report and manually placing a bid at any time (column/line 25/35-26/29) and a user receiving and processing auction closing data (column/line 16/40-17/58). Rackson et al. disclose online and offline traditional auctions (e.g. E-Bay, Sotheby's) where a bidder monitors an auction and updates his or her bid (column 1, lines 37-45; column 3, lines 40-58; column/line 3/57-5/7; column 6, lines 4-23). Therefore, it would have been obvious for a user to monitor a plurality of auction sites using the system of Rackson et al. and update a bid in order to increase the likelihood that the user will obtain the item.

As per claims 13, 19, and 21, Rackson et al. disclose auction closing (column/line 16/40-17/58). Rackson et al. also teach arranging for shipment and

payment for an item (column 18, lines 11-17; column 19, lines 49-58). Therefore, it would have been obvious to one of ordinary skill to delay shipping until it can be determined that the buyer can actually make payments and to automate the process using computers (for tracking receivables and accounts) (e.g. E-Bay, Sotheby's) (column 1, lines 37-45; column 3, lines 40-58; column/line 3/57-5/7).

As per claims 22-26, Rackson et al. teach an auction system utilizing computer instructions and automation tools comprising: creating a user account, presenting the user items to be auctioned, presenting using an intelligent system to retrieve items that match a user's criteria- automatic feedback, a user bidding on an item, a consolidation bidding report that reflects that user bidding activity across multiple stations, monitoring bids, closing an auction, post sale and payment operations (abstract; figures 12-14; column 1, lines 37-45; column 3, lines 40-58; column/line 3/57-5/7; column/line 16/40-17/58; column 18, lines 11-17; column 19, lines 49-58). Regarding the extraction of closing data, it would have been obvious for a user to obtain this data automatically or by periodically visiting the site (e.g. E-Bay, Sotheby's) (abstract; figures 1-3, 10 and 11).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (703) 308-8057. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
c/o Technology Center 2100
Washington, D.C. 20231

or faxed to:

(703) 305-7687 (for formal communications intended for entry and
after-final communications),

or:

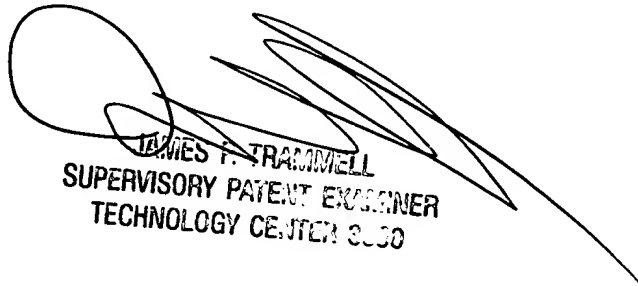
(703) 746-5532 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park 5,
2451 Crystal Drive, 7th Floor Receptionist.

Any inquiry of a general nature or relating to the status of this application
should be directed to the Group receptionist whose telephone number is (703)
308-1113.

Calvin Loyd Hewitt II

January 5, 2004



JAMES F. TRAMMELL
SUPERVISORY PATENT EXAMINER
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